

REMARKS

Introduction

In this response, the subject matter of former claims 15, 16 and 18 has been entered into former independent claim 14, which is now the only independent claim on file. New claim 19 which is dependent to claim 14 incorporates the subject-matter of former claim 6. New claim 20 has been added. All other claims have been canceled.

Further Amendments Made in this Reply

In addition to the amendments referred to above, the following amendments were made in response to the arguments recited in the Office Action :

In response to point 26 at page 9 of the Office Action arguing about the patentable weight of elements recited in the preamble, the paper dispenser feature has been made part of the body of the claim by positively reciting “a paper dispenser body”.

Further, a new claim 20 has been added which positively recites the stack of rectangular paper sheets as an element of the claimed combination. This feature was clearly described in the original specification including in the figures, and therefore no new matter has been added by this amendment.

Finally, dependent claim 19 which otherwise corresponds to former claim 6 has been amended to specify each flap of any given one of the four pairs of flaps being folded inwardly against the other flap of the given pair, as can be seen in the figures. This feature allows to provide neat corners to the paper dispenser where the absence of such pairs of flaps would have let unsightly gaps into the spacing between inner and exterior walls, at least at given viewing angles, and especially for a dispenser as tall as one having a cubical paper-receiving compartment. It is submitted that this feature is not taught nor suggested by the art of record.

Reply to claim rejections under 35 USC 103***Comment pertaining to former claim 18***

Former claim 18, now incorporated in sole independent claim 14, specifies that the rectangular-prism shape of the paper-receiving compartment is cubical. At par. 20, the office action indicated that the Auerbach paper receiving compartment is cubical before the partitions are added. Applicant wishes to clarify that this is not the case, and that in any event, the expression cubical as used in the claim is intended to clearly exclude the Auerbach candy container.

Although the Applicant acknowledges that the Auerbach candy container is rectangular prism shaped prior to adding the partitions, it is not cubical. In a cube, the height is at least comparable to the width and depth. In the Auerbach candy container, the height is significantly shorter than the width and depth, defining a “flat” rectangular-prism shaped configuration rather than a cubical one.

MPEP Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103

Section 2141 II of the MPEP states the following :

As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966).

Obviousness is a question of law based on underlying factual inquiries.

The factual inquiries enunciated by the Court are as follows:

(A) Determining the Scope and Content of the Prior Art

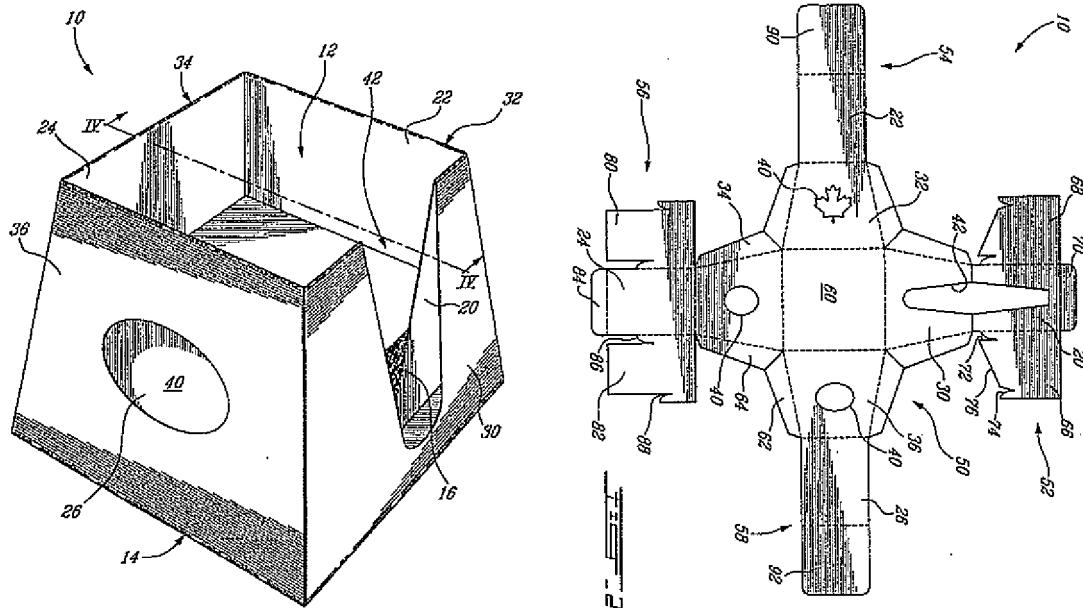
(B) Ascertaining the differences between the claimed invention and the prior art; and

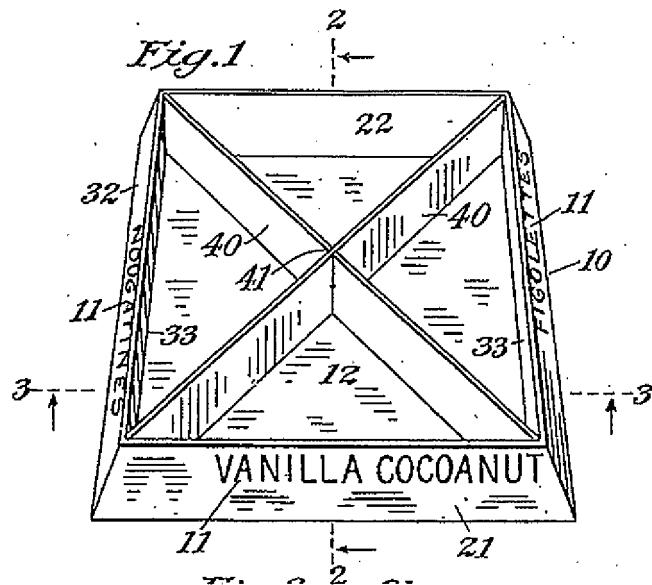
(C) Resolving the level of ordinary skill in the pertinent art.

The scope and content of the Prior Art has been determined by the Examiner in the office action. Here, Applicant wishes to address the ascertaining of the differences between the claimed invention and the prior art and address the question of level of ordinary skill.

Summary of the paper dispenser

The specification discloses a paper dispenser which can be folded from a blank with a cubical paper receiving compartment and has a downwardly extending slot providing digital access to the paper, even when only a few sheets remain. Amongst distinctive features, it has a frustopyramidal shape with inner and exterior walls, and an opening in the exterior wall allowing to see an illustration or marking on the interior wall. Further, its blank is specially designed to allow efficient folding and maintaining of the shape thereafter, the inner walls have interlocking lateral flaps and abutting longitudinal flaps which maintain the inner wall structural position.





Auerbach discloses "containers for merchandise and particularly for candy or similar articles" (lines 9 to 11). The Auerbach container is flat and has diagonal dividers. It has four triangular compartments destined to receive different types of candy and inclined outer walls for identifying the particular type of candy.

Ascertaining the differences between the claimed invention and the prior art

At least the following features of claim 14, the only independent claim now on file, are not disclosed nor suggested from Auerbach :

- a) a paper dispenser body
- b) a cubical paper-receiving compartment
- c) a slot extending downwardly from the top of both one of the exterior walls and a corresponding one of the interior walls to provide digital access to the paper,
- d) at least one of said exterior walls comprises an opening
- e) a corresponding at least one of the interior walls has an exterior face having an illustration or marking which is visible through the opening;

- f) side portions having a flap which precisely fits between the four interior walls when folded against the bottom of said paper dispenser.

Further, at least the following feature of claim 19, is not disclosed nor suggested from Auerbach :

- g) wherein said cross-shaped center portion further comprises four pairs of flaps, with one pair of flaps being disposed at each inner corner of said cross-shaped center portion and each flap of any given one of the four pairs of flaps being folded inwardly against the other flap of the given pair to form a corresponding edge between two adjacent exterior walls

Further, the following feature of claim 20 is not disclosed nor suggested from Auerbach :

- h) a stack of rectangular shaped paper sheets snugly received in the paper-receiving compartments

Looking for now only to claim 14, the Office Action argues the following :

Concerning point a, the office action suggests that one reasonably skilled in the art would have found obvious to modify the Auerbach candy container to receive paper by removing the separators.

Concerning point b, at par. 20, the office action suggests that one reasonably skilled in the art would have found obvious to modify the Auerbach candy container to receive paper by increasing the height of the flat candy container into a cubical configuration where the height would be comparable to the width and depth, including resolving structural issues stemming from the increase in height.

Concerning point c, at par. 10, the office action suggests that one reasonably skilled in the art would have found obvious to modify the Auerbach candy container to obtain a slot to allow reaching the paper with a person's digits, even when only a few papers remain using the teachings of Wynne.

Concerning point d, at par. 3, the office action suggests that one reasonably skilled in the art would have found obvious to modify the Auerbach candy container produce an opening in an outer wall using the teachings of Schmidt which teaches an internal dinosaur figurine visible through a window.

Concerning point e, the office action suggests that one reasonably skilled in the art would have found obvious after having produced the opening in the outer wall to replace the Schmidt dinosaur by an illustration using the teachings of Rinde.

Concerning point f, the office action argues that it would have been obvious to even further modify the Auerbach candy container by adding flaps such as taught by Hillman.

In summary, to arrive to the invention as it is now being claimed in new claim 14, which now further incorporates the subject-matter of former claims 15, 16 and 18, one reasonably skilled in the art would have had to

1. Think of converting the Auerbach candy variety container into a paper dispenser, including removing the dividers, increasing the height to make a cubical paper-receiving compartment, adding a slot to provide digital access to the paper in the paper-receiving compartment, and making structural adaptations to maintain rigidity given the increased height, including providing side portions having a flap which precisely fits between the four interior walls when folded against the bottom.
2. On such a denatured imagined version of the Auerbach container, going even further and thinking of adding an opening on an outer wall on an inclined surface and adding a marking or illustration on the inner to see through the opening.

Resolving the skill of the person skilled in the art

MPEP 2141 II C stresses that :

Any obviousness rejection should include, either explicitly or implicitly

in view of the prior art applied, an indication of the level of ordinary skill. A finding as to the level of ordinary skill may be used as a partial basis for a resolution of the issue of obviousness.

The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. Factors that may be considered in determining the level of ordinary skill in the art may include: (1) "type of problems encountered in the art;" (2) "prior art solutions to those problems;" (3) "rapidity with which innovations are made;" (4) "sophistication of the technology; and" (5) "educational level of active workers in the field. In a given case, every factor may not be present, and one or more factors may predominate."

Applicant cannot find explicit indication of the level of ordinary skill in the office action. One can ponder as to the level of ordinary skill, and of that of a single hypothetical person having the knowledge of all the different fields of art the references relied upon in the office action refer to.

Conclusion concerning non-obviousness

MPEP 2141 III indicates :

[to present a valid obviousness argument] The gap between the prior art and the claimed invention may not be "so great as to render the [claim] nonobvious to one reasonably skilled in the art.".

One will recognize that the gap between the prior art and the invention claimed in claim 14 is significant. This is the case not necessarily only because the gap represented by any one of the 6 major differences between the claim and the prior art can be significant in itself but also by the shear amount of gaps between the prior art and the claimed invention which each require a separate rationale.

In accordance with Applicant's understanding of the law on obviousness, it is the ascertained

ordinary level of skill of the hypothetical person which determines the ability to bridge a gap between the invention and the prior art. In this particular case, the ordinary level of skill of a person having the knowledge of all the different fields of art the references relied upon in the office action refer to cannot have a high level of skill in any one of the particular fields, and the ordinary level of skill could not be so great to make it obvious to bridge a multiple-step gap such as the one required to think of adding an illustration or marking on an inner wall of something which is not intended for paper dispensing and which does not have an opening in its outer wall. Nonetheless, in any event, even if the ordinary level of skill was determined to be sufficiently high to bridge such a gap, the collective presence of 6 major differences between the claimed invention and the prior art and each requiring a separate rationale, in itself, shows to demonstrate that the claim was non-obvious to one reasonably skilled in the art.

In other words, in Applicants view, any human who is able to mentally conceptualize 6 major differences with prior art which may not even be within his grasp is necessarily doing more than something “obvious”, especially given the fact that the probability of such a person having the 6 combined separate rationales all at once is more than unlikely.

Henceforth, in Applicants view, any rejection of claim 14 based on the art of record cannot stand given the above. Applicant thus requests reconsideration and withdrawal of all rejections to claim 14.

Further, because claims 19 and 20 are dependent upon claim 14, they are also acceptable at least by reason of this dependency, and further for the reasons specifically provided above.

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The application is thus believed in condition for immediate allowance, and an early notice to that effect is earnestly solicited. In the event that there remain any questions concerning this response or the application in general, the Examiner is invited to communicate with the undersigned so

that prosecution of this application may be expedited.

Respectfully submitted,

By:

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Date

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment to Deposit Account No. 19-5113. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-5113. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-5113.